

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Pinehurst Village Station
Pinehurst, North Carolina 28370
(John M. Marcum and Bettye M.
Marcum, Petitioners)

Docket No. A2011-49

COMMENTS OF UNITED STATES POSTAL SERVICE
(October 12, 2011)

By means of Order No. 819 (August 22, 2011), the Postal Regulatory Commission docketed correspondence from customers of the Pinehurst Village Station in Pinehurst, North Carolina, assigning PRC Docket No. A2011-49 as an appeal pursuant to 39 U.S.C. § 404(d).¹ The Postal Service renews the arguments set forth in its Notice of Filing² that are also found in its Comments in PRC Docket Nos. A2010-3³ (A2010-3 Comments) and RM2011-13⁴ (RM2011-13 Comments).

This appeal concerns a station, and not a Post Office for purposes of 39 U.S.C. § 404(d). As described in the A2010-3 Comments (at 5-9) and the RM2011-13 Comments (at 1-8), section 404(d) does not apply to retail locations

¹ On August 23, 2011, Petitioners filed a pleading styled as an application for suspension. See Revised Petition for Review Received from John Marcum, PRC Docket No. A2011-49 (August 23, 2011). This pleading was filed after the Pinehurst Village Station had been closed, and thus is moot. See *id.* (reflecting August 23 filing date and August 19 closure date).

² United States Postal Service Notice and Application for Non-Public Treatment, PRC Docket No. A2011-49 (September 2, 2011).

³ Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. A2010-3 (April 19, 2010).

⁴ Initial Comments of the United States Postal Service, PRC Docket No. RM2011-13 (October 3, 2011).

such as stations which are subordinate to a Post Office.⁵ In the Postal Service's view, Congress knowingly used "Post Office" in its technical sense thereby excluding stations and branches, as demonstrated in the legislative history, and because Congress had used "Post Office" in its technical sense for well over a century. Accordingly, the Commission lacks jurisdiction to hear Petitioners' appeal.

In addition to the Postal Service's position on jurisdiction, addressed in more detail in PRC Docket Nos. A2010-3, N2009-1, and RM2011-13, the procedural requirements of 39 U.S.C. § 404(d) do not apply here because the discontinuance of the Pinehurst Village Station does not qualify as a closure envisioned by 39 U.S.C. § 404(d). As the Commission recognized in PRC Docket No. A2010-3, the section 404(d) procedural requirements do not apply where postal customers do not lose access to postal services due to the location of alternate retail facilities in "close proximity" to the discontinued station. See Order No. 477, PRC Docket No. A2010-3 (June 22, 2010) at 7-8. In this case, affected customers will not lose access to postal services because they will continue to have access to the Pinehurst Post Office, located approximately 1.6 miles from Pinehurst Village Station. See United States Postal Service Notice and Application for Non-Public Treatment, PRC Docket No. A2011-49 (September 2, 2011) (Notice) at 2-3, Exhibit 2. In addition, nearby alternate

⁵ Petitioners contend that the Postal Service "has failed to observe Article 3001.117 and post the documents now on file in the Docket at the affected postal offices 'for inspection by affected postal patrons.'" Petitioner(s) Marcum Brief in Support of Their Petition for Appeal and Suspension, PRC Docket No. A2011-49 (September 22, 2011) (Marcum Brief), at ¶ 3. Section 3001.117 applies to Post Offices, but not to stations and branches, and it does not apply to this appeal.

access options are available to customers, and these include a stamp consignment site located within a mile of Pinehurst Village Station – Wells Fargo Bank – and Stamps By Mail®. *Id.* at 3, Exhibit 3.

Even assuming the section 404(d) requirements were applied in the context of the discontinuance of Pinehurst Village Station, the Postal Service satisfied the salient provisions of section 404(d). On March 25, 2011, the Postal Service distributed questionnaires to customers notifying them of the possible discontinuance of Pinehurst Village Station, and inviting comments on the potential change to the postal retail network. Administrative Record⁶ at Item No. 23, pg. 1. The Postal Service also made these questionnaires available over the counter for all interested retail customers. *Id.* Through this notification, the Postal Service furnished customers well over 60 days' notice of the Postal Service's intention to consider discontinuance of the facility. The Postal Service received 444 customer responses to the questionnaires, thus confirming receipt of such notice and the extensive input customers provided. *See id.* Upon making the final decision to discontinue Pinehurst Village Station, the Postal Service informed the community of the decision through a public notice posted on July 8, 2011. *See Revised Petition for Review Received from John Marcum, PRC Docket No. A2011-49 (August 23, 2011), Attachment.*

⁶ Petitioners allege that they have been "severely handicapped" by the Postal Service's redaction of confidential information in the administrative record. Marcum Brief at ¶ 4. They request that "the redaction be lifted," but "would not object to USPS requests for ancillary controls on the unredacted information, for example limiting publication or further distribution by petitioners if needed." *Id.* at ¶ 5. Part 3007 of the Commission rules establishes a process for obtaining access to unredacted materials subject to conditions similar to those described by Petitioners.

The Postal Service further considered all of the pertinent criteria of section 404(d), including the effect on postal services, the community, and employees, and the economic savings arising from the discontinuance.⁷ Administrative Record at Item No. 33. Customers notified the Postal Service of their concerns related to postal services, including the conditions of other nearby postal facilities; the community, including the effect on senior citizens and local businesses; and employees. *Id.* As reflected in the administrative record, the Postal Service considered these concerns during the decision-making process. See *id.* Affected postal employees will be reassigned to other postal facilities in full accordance with agreements between the Postal Service and employee organizations. *Id.* Finally, the Postal Service provided a breakdown of the costs that serve as a basis for its estimate of economic savings. *Id.*

Petitioners assert that the discontinuance of Pinehurst Village Station will have a negative impact on local businesses. Petitioner(s) Marcum Brief in Support of Their Petition for Appeal and Suspension, PRC Docket No. A2011-49 (September 23, 2011) (Marcum Brief) at ¶ 7. Customer responses to questionnaires indicate that the discontinuance of Pinehurst Village Station would not have an adverse effect on local businesses. See Item No. 33, Proposal to Close the Village Station, NC Station and Continue to Provide Service by Independent Post Office, at 3. Any anecdotal evidence regarding changes in local business traffic after the closure of Pinehurst Village Station was developed

⁷ Petitioners argue that the Postal Service failed to comply with the National Historic Preservation Act. Marcum Brief at ¶ 9. Any arguments based on the National Historic Preservation Act are beyond the Commission's jurisdiction. See 39 C.F.R. § 241.4(d) (indicating that compliance with the National Historic Preservation Act is an internal Postal Service matter subject to the scrutiny of the Postal Service Board of Governors).

after the Postal Service made its decision to discontinue Pinehurst Village Station and is not part of the record, and thus could not be considered in this appeal, assuming it were within the scope of the Commission's jurisdiction. See 39 U.S.C. § 404(d)(5) ("The Commission shall review [the Postal Service decision] on the basis of the record before the Postal Service in making [its decision]").

Petitioners allege that the Postal Service estimate regarding economic savings is inaccurate. Marcum Brief at ¶ 8. As support for this allegation, Petitioners make representations regarding the number of former Pinehurst Village Station Post Office Box customers who chose curbside delivery after Pinehurst Village Station's closure. *Id.* But like the information regarding local business impact discussed above, this information was developed after the Postal Service made its final determination regarding the discontinuance of Pinehurst Village Station and is not part of the record, and thus cannot be considered in this appeal.

In its responses to customer questionnaires, the Postal Service addressed customer concerns about obtaining services from a different postal retail location. Specifically, the Postal Service informed customers that, if Pinehurst Village Station is discontinued, they would have a choice of carrier delivery or Post Office Box service. *Id.* at Item No. 22, pg. 438 and Item No. 23, pg. 1. It also explained that while a change of address is necessary for those customers choosing carrier delivery service, customers choosing Post Office Box service at the Pinehurst Post Office could retain their existing addresses. *Id.* In addition, the Postal Service identified the numerous retail service options available to

customers, including the Pinehurst Post Office located within 1.6 miles of Pinehurst Village Station, and the ability to purchase stamps by telephone, through the internet, or at stamp consignment locations listed at www.usps.com.
Id. at Item No. 22, pg. 444 and Item No. 23, pg. 20.

For the reasons set forth above, and in the Notice of Filing in this docket and the Postal Service Comments in PRC Docket Nos. A2010-3 and RM2011-13, the appeal should be denied.

Respectfully submitted,

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